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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
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17 **Scott Johnson,**

18 Plaintiff,

19 v.

20 **Philip J. Sweat**, in individual and
21 representative capacity as trustee Of
22 The Sweat Family Trust;
23 **C&S Automotive Group LLC**, a
24 California Limited Liability
25 Company

26 Defendants.

27 **Case No.**

28 **Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

19 Plaintiff Scott Johnson complains of Philip J. Sweat, in individual and
20 representative capacity as trustee Of The Sweat Family Trust; C&S
21 Automotive Group LLC, a California Limited Liability Company; and alleges
22 as follows:

23
24 **PARTIES:**

25 1. Plaintiff is a California resident with physical disabilities. Plaintiff is a
26 level C-5 quadriplegic. He cannot walk and also has significant manual
27 dexterity impairments. He uses a wheelchair for mobility and has a specially
28 equipped van.

1 2. Defendant Philip J. Sweat, in individual and representative capacity as
2 trustee Of The Sweat Family Trust, owned the real property located at or about
3 100 S. Main Street, Milpitas, California, in April 2021.

4 3. Defendant Philip J. Sweat, in individual and representative capacity as
5 trustee Of The Sweat Family Trust, owns the real property located at or about
6 100 S. Main Street, Milpitas, California, currently.

7 4. Defendant C&S Automotive Group LLC owned Big O Tires located at
8 or about 100 S. Main Street, Milpitas, California, in April 2021.

9 5. Defendant C&S Automotive Group LLC owns Big O Tires located at or
10 about 100 S. Main Street, Milpitas, California, currently.

11 6. Plaintiff does not know the true names of Defendants, their business
12 capacities, their ownership connection to the property and business, or their
13 relative responsibilities in causing the access violations herein complained of,
14 and alleges a joint venture and common enterprise by all such Defendants.
15 Plaintiff is informed and believes that each of the Defendants herein,
16 including Does 1 through 10, inclusive, is responsible in some capacity for the
17 events herein alleged, or is a necessary party for obtaining appropriate relief.
18 Plaintiff will seek leave to amend when the true names, capacities,
19 connections, and responsibilities of the Defendants and Does 1 through 10,
20 inclusive, are ascertained.

21

22 **JURISDICTION & VENUE:**

23 7. The Court has subject matter jurisdiction over the action pursuant to 28
24 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
25 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

26 8. Pursuant to supplemental jurisdiction, an attendant and related cause
27 of action, arising from the same nucleus of operative facts and arising out of
28 the same transactions, is also brought under California's Unruh Civil Rights

1 Act, which act expressly incorporates the Americans with Disabilities Act.

2 9. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
3 founded on the fact that the real property which is the subject of this action is
4 located in this district and that Plaintiff's cause of action arose in this district.

5

6 **FACTUAL ALLEGATIONS:**

7 10. Plaintiff went to Big O Tires in April 2021 (three times) with the
8 intention to avail himself of its goods or services motivated in part to
9 determine if the defendants comply with the disability access laws.

10 11. Big O Tires is a facility open to the public, a place of public
11 accommodation, and a business establishment.

12 12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
13 to provide wheelchair accessible parking in conformance with the ADA
14 Standards as it relates to wheelchair users like the plaintiff.

15 13. Big O Tires provides parking to its customers but fails to provide any
16 wheelchair accessible parking.

17 14. One problem that plaintiff encountered was that there was no accessible
18 parking whatsoever in the parking lot.

19 15. Plaintiff believes that there are other features of the parking that likely
20 fail to comply with the ADA Standards and seeks to have fully compliant
21 parking for wheelchair users.

22 16. On information and belief, the defendants currently fail to provide
23 wheelchair accessible parking.

24 17. These barriers relate to and impact the plaintiff's disability. Plaintiff
25 personally encountered these barriers.

26 18. Even though the plaintiff did not personally confront the barrier, the
27 sales counter is not accessible. The sales counter is greater than 36 inches in
28 height. And while there is a lowered writing surface nearby, transactions

1 necessarily take place at the higher counter, which is more than 36 inches in
2 height.

3 19. As a wheelchair user, the plaintiff benefits from and is entitled to use
4 wheelchair accessible facilities. By failing to provide accessible facilities, the
5 defendants denied the plaintiff full and equal access.

6 20. The failure to provide accessible facilities created difficulty and
7 discomfort for the Plaintiff.

8 21. The defendants have failed to maintain in working and useable
9 conditions those features required to provide ready access to persons with
10 disabilities.

11 22. The barriers identified above are easily removed without much
12 difficulty or expense. They are the types of barriers identified by the
13 Department of Justice as presumably readily achievable to remove and, in fact,
14 these barriers are readily achievable to remove. Moreover, there are numerous
15 alternative accommodations that could be made to provide a greater level of
16 access if complete removal were not achievable.

17 23. Plaintiff will return to Big O Tires to avail himself of its goods or services
18 and to determine compliance with the disability access laws once it is
19 represented to him that Big O Tires and its facilities are accessible. Plaintiff is
20 currently deterred from doing so because of his knowledge of the existing
21 barriers and his uncertainty about the existence of yet other barriers on the
22 site. If the barriers are not removed, the plaintiff will face unlawful and
23 discriminatory barriers again.

24 24. Given the obvious and blatant nature of the barriers and violations
25 alleged herein, the plaintiff alleges, on information and belief, that there are
26 other violations and barriers on the site that relate to his disability. Plaintiff will
27 amend the complaint, to provide proper notice regarding the scope of this
28 lawsuit, once he conducts a site inspection. However, please be on notice that

1 the plaintiff seeks to have all barriers related to his disability remedied. See
 2 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 3 encounters one barrier at a site, he can sue to have all barriers that relate to his
 4 disability removed regardless of whether he personally encountered them).

5

6 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
 7 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 8 Defendants.) (42 U.S.C. section 12101, et seq.)

9 25. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 10 again herein, the allegations contained in all prior paragraphs of this
 11 complaint.

12 26. Under the ADA, it is an act of discrimination to fail to ensure that the
 13 privileges, advantages, accommodations, facilities, goods and services of any
 14 place of public accommodation is offered on a full and equal basis by anyone
 15 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 16 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 17 a. A failure to make reasonable modifications in policies, practices,
 18 or procedures, when such modifications are necessary to afford
 19 goods, services, facilities, privileges, advantages, or
 20 accommodations to individuals with disabilities, unless the
 21 accommodation would work a fundamental alteration of those
 22 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 23 b. A failure to remove architectural barriers where such removal is
 24 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 25 defined by reference to the ADA Standards.
- 26 c. A failure to make alterations in such a manner that, to the
 27 maximum extent feasible, the altered portions of the facility are
 28 readily accessible to and usable by individuals with disabilities,

1 including individuals who use wheelchairs or to ensure that, to the
2 maximum extent feasible, the path of travel to the altered area and
3 the bathrooms, telephones, and drinking fountains serving the
4 altered area, are readily accessible to and usable by individuals
5 with disabilities. 42 U.S.C. § 12183(a)(2).

6 27. When a business provides parking, it must provide accessible parking.

7 28. Here, accessible parking has not been provided in conformance with the
8 ADA Standards.

9 29. When a business provides sales counters, it must provide accessible
10 sales counters.

11 30. Here, accessible sales counters have not been provided in conformance
12 with the ADA Standards.

13 31. The Safe Harbor provisions of the 2010 Standards are not applicable
14 here because the conditions challenged in this lawsuit do not comply with the
15 1991 Standards.

16 32. A public accommodation must maintain in operable working condition
17 those features of its facilities and equipment that are required to be readily
18 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

19 33. Here, the failure to ensure that the accessible facilities were available
20 and ready to be used by the plaintiff is a violation of the law.

21

**22 II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
23 RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
24 Code § 51-53.)**

25 34. Plaintiff repleads and incorporates by reference, as if fully set forth
26 again herein, the allegations contained in all prior paragraphs of this
27 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,
28 that persons with disabilities are entitled to full and equal accommodations,

1 advantages, facilities, privileges, or services in all business establishment of
2 every kind whatsoever within the jurisdiction of the State of California. Cal.
3 Civ. Code § 51(b).

4 35. The Unruh Act provides that a violation of the ADA is a violation of the
5 Unruh Act. Cal. Civ. Code, § 51(f).

6 36. Defendants' acts and omissions, as herein alleged, have violated the
7 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
8 rights to full and equal use of the accommodations, advantages, facilities,
9 privileges, or services offered.

10 37. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
11 discomfort or embarrassment for the plaintiff, the defendants are also each
12 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
13 (c).)

14 38. Although the plaintiff encountered frustration and difficulty by facing
15 discriminatory barriers, even manifesting itself with minor and fleeting
16 physical symptoms, the plaintiff does not value this very modest physical
17 personal injury greater than the amount of the statutory damages.

18

19

PRAYER:

20 Wherefore, Plaintiff prays that this Court award damages and provide
21 relief as follows:

22 1. For injunctive relief, compelling Defendants to comply with the
23 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
24 plaintiff is not invoking section 55 of the California Civil Code and is not
25 seeking injunctive relief under the Disabled Persons Act at all.

26 2. For equitable nominal damages for violation of the ADA. See
27 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)
28 and any other equitable relief the Court sees fit to grant.

1 3. Damages under the Unruh Civil Rights Act, which provides for actual
2 damages and a statutory minimum of \$4,000 for each offense.

3 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
4 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

5
6 Dated: May 25, 2021

 CENTER FOR DISABILITY ACCESS

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8 By: 
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10 Amanda Seabock, Esq.
11 Attorney for plaintiff